

## Consultation response

# **Shelter response to Department for Communities and Local Government on Homelessness (Suitability of Accommodation) (England) Order 2012 - Consultation**

July 2012

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## Until there's a home for everyone

In our affluent nation, tens of thousands of people wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their home altogether. The desperate lack of decent, affordable housing is robbing us of security, health, and a fair chance in life.

Shelter believes everyone should have a home.

More than one million people a year come to us for advice and support via our website, helplines and national network of services. We help people to find and keep a home in a place where they can thrive, and tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

# Summary

- Shelter strongly welcomes the draft Homelessness (Suitability of Accommodation) Regulations. However, there are a number of areas where we believe the regulations should be significantly strengthened if they are to provide adequate protection to the most vulnerable homeless households.
- **We strongly agree that the five broad areas listed** (physical condition; health & safety; licensing of houses in multiple occupation; landlord behaviour and elements of good management) should be important in determining suitability.
- **However, there are two further areas where we believe better regulation is required: affordability and location of accommodation.** These are almost invariably the most important factors in any offer of accommodation. For example, the interim findings of longitudinal research<sup>1</sup> by Shelter and Crisis exploring the use of the private rented sector to house homeless people found that *'most people said that they felt that the area was the most important factor for them, and one that they had based a decision on, alongside the cost of the tenancy'*.
- We urge the Government to strengthen the affordability regulations<sup>2</sup> to ensure that accommodation cannot be considered affordable if, as a result of the rent level or any shortfall between the actual rent and the tenant's housing benefit, the tenant's income would fall below a basic subsistence level.
- Location is such a vital aspect of suitability that it requires provision to be made in regulations, and not merely in the Homelessness Code of Guidance<sup>3</sup>. **We therefore strongly welcome the Government's preferred approach to strengthening the location aspects of the legislation by specifying them in regulations.**

## Physical condition of the property

- We support the requirement of the draft regulations that accommodation shall not be regarded as suitable if it is not in a reasonable physical condition. However, Shelter believes that, in order to fully protect homeless households, the **regulations must require that, as a minimum, local authorities should ensure the accommodation is free of Category 1 Hazards (conditions that pose a serious risk to the health of the occupants)** as set out in the Housing Health and Safety Rating System<sup>4</sup> (HHSRS). Local authorities already have a duty to take enforcement action where such hazards are present, although some are poor at inspecting properties proactively.
- Given the gravity of the risks involved with a Category 1 Hazard, **inspections of properties for homeless families should only be made by those fully trained and experienced in making HHSRS assessments.** Therefore, it is appropriate that a local housing standards enforcement officer (usually an environmental health officer) should make this assessment, rather than, as suggested, a letting agent with a vested interest in the obtaining a letting.
- This addition to the regulations would also avoid the unnecessary and costly scenario of local authorities having to extract a homeless family from a tenancy because the accommodation was subsequently found to have a Category 1 Hazard.

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<sup>1</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, page 34

<sup>2</sup> [Homelessness \(Suitability of Accommodation\) Order 1996](#) SI No.3204/1996

<sup>3</sup> DCLG (July 2006) [Homelessness Code of Guidance for Local Authorities](#)

<sup>4</sup> Established by the [Housing Act 2004](#)

### *Health and safety matters (gas electrical and fire safety)*

- **While we welcome the general requirement that the landlord has taken reasonable fire safety precautions, we strongly advise that the regulations are strengthened**, to require that all furnishings supplied comply with the legal minimum standards set by the Furniture and Furnishings (Fire) (Safety) Regulations 1988<sup>5</sup>.
- **We also believe the regulations should require that adequate smoke alarms are installed**; there are adequate electrical sockets to prevent overloading; electrical installations show no signs of a fire risk; a fire safety risk assessment to comply with the Regulatory Reform (Fire Safety) Order 2005<sup>6</sup> has been carried out; and, that people placed in accommodation are advised on how to prevent and escape a fire, such as ensuring fire doors are kept closed and an escape route is planned.
- We welcome the general requirement that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, but we strongly advise that the regulations are strengthened to require that a trained and experienced HHSRS assessor inspects the accommodation for signs and risks of carbon monoxide leaks and a carbon monoxide alarm is installed.

### *Licensing for Houses in Multiple Occupation*

- We support the requirement of the draft regulations that accommodation shall not be regarded as suitable where it is a house in multiple occupation subject to licensing under sections 55 and 56 of the Housing Act 2004 and is not licensed.

### *Landlord behaviour*

- We support the requirement that accommodation shall not be regarded as suitable where the local housing authority view the landlord is not a fit and proper person to act in the capacity of landlord.
- However, **we want the regulations to go further and require that only accredited landlords should be regarded as fit and proper for the purposes of discharge of the statutory homeless duty**. As these regulations regard typically vulnerable families, this is only a fair check that the landlord has a reasonable commitment to professional standards.
- We further feel that the regulations should require that homeless households should have a named contact in the local authority (such as a housing officer or tenancy relations officer) to whom they can complain in confidence about a landlord's behaviour or level of service. At Shelter, we know this is particularly important when private tenants can face retaliatory evictions and where a failed tenancy simply cycles the family back into the council's homelessness service.

### *Elements of good management*

- We support the requirement in the draft regulations that accommodation shall not be regarded as suitable where the property does not have a valid Energy Performance Certificate; or a current gas safety record; or the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.
- **We strongly advise that a model tenancy agreement is included within the statutory guidance on the legislation**. This would provide landlords and local authorities with a standard form agreement to use in cases of homelessness discharge, and would help to prevent landlords

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<sup>5</sup> [The Furniture and Furnishings \(Fire\) Safety Regulations 1988](#), SI No.1324/1988

<sup>6</sup> [The Regulatory Reform \(Fire Safety\) Order 2005](#), SI No.1541/2005

from using contracts that contain unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy.

- We would also advise that the statutory guidance should contain examples of clauses that should not be used in tenancy agreements used as a discharge of homelessness duty.

### **Location of accommodation**

- **We warmly welcome the proposal that the existing provisions on location and suitability, namely Section 208 of the Housing Act 1996<sup>7</sup> and paragraph 17.41 of the Homelessness Code of Guidance<sup>8</sup> should be strengthened so that homeless households are placed nearer to their previous home.**
- We agree that the new regulation should list the factors to which an authority must have regard (including the “reasonably practicable” factor) in deciding whether to make an offer of accommodation to an applicant within its own area, and if that is not considered possible, in choosing a location which may mitigate the worst effects of uprooting a family.
- However, we do not think the regulations go far enough in simply requiring local authorities to *take into account* the specified location factors. We believe that the regulations should require that accommodation *should not be considered suitable* if it causes serious disruption to the household, such as: having to give up a job; children having to change school in a public exam year; children being unable to access a place at school; or people losing vital social support or medical care.
- We agree with the listed factors given in the draft regulations. Each is key in promoting and preserving health and well-being both in the short and long-term for families and individuals. Alongside our belief in the need for a tighter consideration of them, we would want to see that any out-of-area placements that need to be made are reasonable. For example, it should not be the case that not being able to place a homeless household in the immediate local authority should trigger a disregard for the region of the placement and thereby see people moved across the country.
- If this were allowed, it could easily lead to a pattern of repeat homelessness, which is both expensive for the state and significantly damaging for individuals, potentially leading to rough sleeping.

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<sup>7</sup> [Housing Act 1996, s.208](#)

<sup>8</sup> DCLG (July 2006) [Homelessness Code of Guidance for Local Authorities](#)

# Introduction

Shelter remains opposed to the changes to the duty on local authorities to help homeless households (brought forward in the recent Localism Act 2011) for various research-backed reasons, previously noted elsewhere.

However, we recognise that this power is now available to local authorities, and has the backing of many of them. Therefore, if local housing authorities are to discharge their main duty to homeless households with potentially one offer of private rented accommodation, rather than necessarily offer a more suitable home, it becomes much more important that the private rented offer is suitable for the needs of the household.

As the consultation points out, during the passage of the Localism Bill members in both Houses of Parliament and voluntary homelessness organisations, including Shelter and Crisis, expressed concerns about the quality of private rented sector accommodation. Standards in the private rented sector are notably worse than in other tenures: 40 per cent of private tenants live in non-decent homes, compared to 23 per cent of social tenants and 29 per cent of owner-occupiers<sup>9</sup>.

The change which links housing benefit payments to the thirtieth percentile of local rents risks pushing homeless households into the bottom third of the private rented sector where the worst conditions and most neglectful landlords prevail<sup>10</sup>. Therefore, regulations are essential to protect homeless households from low standard accommodation and landlordism.

It was encouraging that Ministers accepted that additional safeguards were necessary to prevent the use of poor quality accommodation for homeless households. Especially as homeless households are likely to be vulnerable and have no, or little, choice over the accommodation offered as a final discharge of duty. For example, during the Lords 2nd Reading debate of the Bill, Baroness Hanham stated:

*Local authorities will still have a duty to secure suitable accommodation for those who are eligible and in priority need. As I said, crucially the accommodation must be suitable, which covers a wide gamut of issues, including affordability, size, condition, accessibility and location.*<sup>11</sup>

We therefore strongly welcome the draft Homelessness (Suitability of Accommodation) Regulations. However, there are a number of areas where we believe the regulations should be strengthened if they are to provide adequate protection to the most vulnerable homeless households.

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<sup>9</sup> DCLG (2011) English Housing Survey Headline Report 2009-10

<sup>10</sup> [Shelter](#) (September 2010) Research summary: survey of environmental health officers found that 47% of respondents had encountered examples of landlords engaging in the harassment or illegal eviction (or both) of tenants and 99% of respondents had come across landlords who persistently refuse to maintain their property in a safe condition - 36% of respondents said they came across such cases frequently.

<sup>11</sup> House of Lords Official report (7 June 2011) Column 253

# Consultation Questions

## Part One: Suitability of accommodation used for the purposes of a private rented sector offer to end the main homelessness duty

The current homelessness legislation already includes safeguards regarding the accommodation used to end the main homelessness duty and these would apply in cases where the local authority decides to bring the duty to an end with a private sector offer.

The Housing Act 1996 provides that all accommodation provided or secured for homeless persons under any of the authority's duties must be 'suitable' for the applicant and for his/her household; therefore the accommodation would need to be suitable for everyone in the applicant's household. In considering suitability local authorities must consider, for example, whether the accommodation is affordable for the applicant, is a suitable size, in a suitable condition, suitably accessible and in a suitable location. Applicants have the right to ask the authority to review their decision that accommodation is suitable and, if dissatisfied with that decision, have the right to appeal to the county court on a point of law.

Section 210 of the Housing Act 1996 provides that the Secretary of State has the power to specify by regulations the circumstances in which accommodation is or is not to be regarded as suitable, and matters to be taken into account or disregarded in determining whether accommodation is suitable. There are currently only two sets of regulations:

- One<sup>12</sup> sets out a very basic definition of 'affordability' as a factor in suitability, in terms of balancing a person's resources against their necessary or reasonable living expenses.
- The other<sup>13</sup> provides that bed and breakfast accommodation is not suitable for those with family commitments unless there is no other accommodation available, and then only for a maximum period of six weeks.

The proposed new suitability regulations, as set out in part one of the consultation, will apply only to private rented sector offers made to end the main homelessness duty. It will not apply to temporary accommodation nor will it apply to social rented sector accommodation, where there are existing suitability requirements in the homelessness legislation and the statutory Homelessness Code of Guidance.

Broadly, Shelter welcomes the proposed new regulations.

### Question 1: Do you agree that these five areas should be important in determining whether accommodation is to be regarded as not suitable?

The Homelessness (Suitability of Accommodation) (England) Order 2012 (which we subsequently refer to as the 'suitability regulations') will set out the circumstances in which accommodation used for the purposes of a private rented sector offer to end the main homelessness duty is not to be regarded as suitable. The proposed regulations focus on physical and management standards because these were the two areas where further protection was deemed necessary and which are not covered by the current suitability requirements.

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<sup>12</sup> [Homelessness \(Suitability of Accommodation\) Order 1996](#) SI No.3204/1996.

<sup>13</sup> [Homelessness \(Suitability of Accommodation\) \(England\) Order 2003](#) SI No.3326/2003. The position in Wales is governed by the Homelessness (Suitability of Accommodation)(Wales) Order 2006 SI No.650/2006, which is stronger in relation to bed and breakfast accommodation and also requires authorities specifically to consider other factors such as health needs and the accessibility of support and of social services.

The proposed regulations combine the main existing legislative requirements on private landlords and some greater requirements where there is either established common practice or particular concerns for homeless people.

The Government proposes that these circumstances cover five broad areas:

- Physical condition of the property
- Health and safety matters (e.g. gas, electrical and fire safety)
- Licensing for Houses in Multiple Occupation
- Landlord behaviour; and
- Elements of good management

**Shelter strongly agrees that these five areas listed should be important in determining suitability for the reasons outlined below.**

### *Physical standards*

Private rented accommodation is often poor quality. 40 per cent of private tenants live in non-decent homes, compared to 23 per cent of social tenants and 29 per cent of owner-occupiers<sup>14</sup>. In 2011/12, where recorded, more than 40 per cent of people in England who sought help from Shelter were private rented sector tenants<sup>15</sup>, even though only 17 per cent of all households live in this sector.<sup>16</sup>

Large numbers of households are already being placed in the private rented accommodation<sup>17</sup>, often at considerable cost to the taxpayer. However, there remains very little assurance of standards in the sector, particularly where there is a shortage of affordable accommodation. For example, a homelessness manager with a London council, quoted in *Inside Housing*<sup>18</sup>, highlights some of the problems local authorities encounter in finding suitable, good quality, private rented housing to use as temporary and permanent housing:

*"Because there are so few landlords and boroughs fighting for them, you just take it [the accommodation]," he explained. "But we don't have as much information about the landlords as we would like and they can be as unprofessional as they like. It will probably be the same type of landlords we use for temporary accommodation and I see problems being replicated."*

A number of local authorities have raised concerns about the standard and suitability of some private rented accommodation. They feel that some form of protection should be put in place to ensure that the properties are of good enough quality to meet the needs of their clients.<sup>19</sup>

### *Management standards*

There is also a risk that homeless households will be placed with private landlords who are wholly unsuitable to be letting homes to vulnerable people. In the past, this has included landlords who have consistently breached housing legislation, practiced unlawful discrimination or even committed sexual offences.

Shelter research<sup>20</sup> has found that nine out of ten environmental health officers have encountered landlords engaging in the harassment or illegal eviction (or both) of tenants, and 78 per cent had dealt with landlords who persistently refuse to maintain their property in a safe condition.

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<sup>14</sup> DCLG (2011) English Housing Survey Headline Report 2009-10

<sup>15</sup> Shelter Services Statistics 2011/12

<sup>16</sup> DCLG English Housing Survey Household Report 2010-11

<sup>17</sup> DCLG (August 2011) [Homelessness Prevention and Relief: England 2010/11 Experimental Statistics](#)

<sup>18</sup> Inside Housing, "Localism Bill pushes homeless into private sector", 15 December 2010

<sup>19</sup> CLG (February 2011) [Local decisions: next steps towards a fairer future for social housing – summary of responses to consultation](#) (paragraph 6.8)

<sup>20</sup> Shelter (July 2010) [Campaigns Briefing: Tackling rogue landlords](#)

## Two additional areas of importance

While we welcome the regulation on physical and management standards, Shelter believes there are two equally important areas for consideration in determining suitability.

- the affordability of accommodation provided; and
- the location of accommodation.

These are almost invariably the most important factors in any offer of accommodation. For example, the interim findings of longitudinal research<sup>21</sup> by Shelter and Crisis exploring the use of the private rented sector to house homeless people found that:

*'When participants were asked what factors associated with accommodation they thought they could or couldn't make a decision on in choosing their tenancy, most people said that they felt that the area was the most important factor for them, and one that they had based a decision on, alongside the cost of the tenancy.'*

### Affordability

We are very disappointed that the consultation makes no proposals to ensure that the private rented accommodation offered is affordable to applicants. The most important factor in finding a home is being able to afford it without the worry of falling into debt, arrears and repossession, and without feeling trapped by benefit dependency – all of which build up later costs for the taxpayer. Being unable to afford a suitable home is often the root cause of homelessness.

The affordability of private rented accommodation is one of the main reasons it can be unsuitable for accommodating homeless households:

- In a survey of local authority homelessness prevention services conducted by DCLG in 2007<sup>22</sup> nearly 40 per cent of respondents cited 'issues with private renting' as a barrier to alleviating homelessness. One of the main reasons for this was the cost of private sector rents and their interaction with housing benefit.
- This is borne out by DWP research<sup>23</sup>, which shows that 49 per cent of all Local Housing Allowance (LHA) claimants have shortfalls in their housing benefit, with the mean average shortfall being £24 per week.<sup>24</sup>

In Shelter's view, the existing affordability regulations are too weak. As they stand, they provide little scope for homeless households to successfully challenge the suitability of an offer of private rented housing on the basis that to cover the full rent, or any shortfall between the rent and the housing benefit payment, the household's income would fall below the recognised subsistence level. For this purpose, we define subsistence level in terms of those benefits which the state recognises as basic living requirements: currently Income Support or income-based Jobseeker's Allowance, or the equivalent standard allowance under the proposed new Universal Credit.

Strengthened regulation would enshrine the principle that accommodation cannot be affordable if, as a result of accepting it, a person's income will fall below the level of basic benefits. This principle is already to be found in the Homelessness Code of Guidance<sup>25</sup>, but enshrining it in regulations would ensure that authorities act upon it and it can be enforced by the courts if need be.

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<sup>21</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund Page 34

<sup>22</sup> DCLG (June 2007) [Homelessness Statistics June 2007 and Local Authority Survey of Homelessness Prevention: Policy Briefing 19](#), page 24

<sup>23</sup> DWP (February 2011) [Two Year Review of Local Housing Allowance](#), page 13, paragraph 20

<sup>24</sup> DWP (February 2011) [Two Year Review of Local Housing Allowance](#), page 97, paragraph 8

<sup>25</sup> DCLG (July 2006) [Homelessness Code of Guidance for Local Authorities](#), paragraphs 17.39 and 17.40

Strengthened regulation on affordability is particularly important to address the reductions in the levels of Local Housing Allowance (LHA), some of which came into effect on 1 April 2011, and the forthcoming changes introduced by the Welfare Reform Act 2011.

The severance of the link between homelessness and 'reasonable preference' for an allocation of social housing, will mean that the poorest and most vulnerable households will be at risk of remaining in the bottom third of the private sector<sup>26</sup>, perhaps in a cycle of repeat homelessness, dependent on housing benefit (HB) to pay their rent because they are unable to gain access to cheaper and more secure social housing.

- In areas where housing is expensive, it will be more difficult to find affordable accommodation to offer to HB claimants as a discharge of homelessness duty. For example, research<sup>27</sup> shows that some inner London boroughs are likely to become almost entirely unaffordable to low-income tenants on LHA by 2016.
- At the same time, the HB cuts are likely to create an increase in homelessness in expensive areas. Research<sup>28</sup> concludes that the HB changes coming into effect from April 2011 are likely to result in 35,000 households approaching their council for homelessness advice and assistance, with local authorities owing the full homelessness duty to 19,000 families with dependent children.
- Thirdly, proposals to cap out-of-work benefits will further restrict the affordability of the private rented sector and could force larger homeless households further into poverty as they struggle to pay housing costs. Although this cap has been characterised as a cap on large families, high rents in London mean that families with just two children will be subject to the cap in all inner London and many parts of outer London. The reach of the household benefit cap will also make large areas of the south-east unaffordable because of the relatively high but not excessive rent levels charged in the private rented sector. For example families with three children in Harlow, Basingstoke and Southend would all be affected by the cap.<sup>29</sup>

**Shelter urges the Government to strengthen the affordability regulations to ensure that accommodation cannot be considered affordable if, as a result of the level of rent charged or of any shortfall between the actual rent and the tenant's housing benefit, the tenant's income would fall below a basic subsistence level.**

For households with children these amounts should be equalised for family size to ensure that the needs and additional expense of the children are taken into account.

### **Location**

The second most important factor in finding a home is that it is in a location that is suitable, in terms of avoiding disruption to family life, such as children being able to continue at the same school and people being able to retain employment.

In relation to the location of accommodation, there is an overlap between the concept of suitability and the requirement in section 208 of the Housing Act 1996 that an authority must 'so far as reasonably practicable' secure that accommodation is available for a homeless applicant in its own district.

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<sup>26</sup> Pre-April 2011, LHA rates were based on the mid-point of all rents in an area. Since April 2011, LHA rates have been based on the 30th percentile of all rents. This means that only three in ten properties will be affordable to LHA claimants.

<sup>27</sup> Fenton, A. (January 2011) [Housing Benefit reform and the spatial segregation of low-income households in London](#), Cambridge Centre for Housing and Planning Research

<sup>28</sup> Fenton, A. (September 2010) [How will changes to Local Housing Allowance affect low-income tenants in private rented housing?](#), Cambridge Centre for Housing and Planning Research

<sup>29</sup> Lister, S., Reynolds, L. And Webb, K. (March 2011) [The Impact of the Welfare Reform Bill measures on affordability for low income private renting families](#), Shelter Research Report

However, there is a possibility that a local housing authority will claim that it is not 'reasonably practicable' to place an applicant in its own area and use this argument to justify making an offer of accommodation in a different borough, sometimes a considerable distance away.

**Location is such a vital aspect of suitability that it requires provision to be made in regulations, and not merely in the Code of Guidance. We therefore strongly welcome the Government's preferred approach to strengthening the location aspects of the legislation by specifying them in regulations (see our response to questions 4 to 6 below).**

**Question 2: Do you agree with the proposed requirements as set out in detail above? Please give details and reasons.**

#### *Physical standards*

**We support the requirement of the draft regulations that accommodation shall not be regarded as suitable where:**

**(a) *the local housing authority are of the view the accommodation is not in a reasonable physical condition.***

**However, we urge the Government to strengthen the regulations to require that accommodation should not be regarded as suitable where physical conditions are so poor that they fail a risk assessment test under the Housing Health and Safety Rating System<sup>30</sup> to the extent that they amount to a 'Category 1 Hazard' (conditions that pose a serious risk to the health of the occupants).**

The Housing Act 2004<sup>31</sup> allows councils to take action where they consider housing conditions to be a danger to health and safety, for instance by serving an improvement notice, hazard warning notice or a prohibition order. The Act requires that if a local housing authority considers that a Category 1 Hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard. If necessary (or if the owner/manager requests) the local authority may carry out any necessary remedial work themselves and reclaim the costs. It is a criminal offence not to comply with the terms of a notice issued under the Act. Category 1 Hazards include serious damp, mould and cold - all physical standards that the consultation cites as being concerns of MPs during the passage of the Localism Bill.<sup>32</sup>

Government guidance<sup>33</sup> on the Health and Housing Rating System states:

*When local authority officers inspect a dwelling they will look for any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that can give rise to a hazard. They will judge the severity of the risk by thinking about the likelihood of an occurrence that could cause harm over the next twelve months, and the range of harms that could result. The local authority officer will make these judgements by reference to those who, mostly based on age, would be most vulnerable to the hazard, even if people in these age groups may not actually be living in the property at the time. This means even a vacant dwelling can be assessed and that if the dwelling is rated as safe for those considered to be most vulnerable it will be safe for anyone. The HHSRS score is calculated following an inspection.*

Therefore, it would be of serious concern if a local authority officer (such as a housing officer or environmental health officer) were to take the view that accommodation was in a 'reasonable physical condition' if there were Category 1 Hazards present, and for the accommodation to subsequently be offered to a homeless household without the hazards being rectified.

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<sup>30</sup> Established by the Housing Act 2004

<sup>31</sup> [Housing Act 2004](#), Part 1, Chapter 1, Section 5(1)

<sup>32</sup> DCLG (May 2012) [Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 - Consultation](#), page 9, paragraph 14

<sup>33</sup> DCLG (May 2006) [Housing Health and Safety Rating System: Guidance for Landlords and Property Related Professionals](#)

The consultation<sup>34</sup> confirms that 'the Government considers that when determining the suitability of accommodation secured under the homelessness legislation, local authorities should, as a minimum, ensure that the accommodation is free of Category 1 hazards'. However, it goes on to say:

*'Nonetheless we recognise that there are difficulties with making legislation that would prevent local authorities from using properties with Category 1 (or any other) hazards. A full Rating System inspection by an environmental health officer is costly and may not be appropriate in all cases. Also, there may be difficulties inspecting accommodation that is out of authority's district and is therefore reliant on another authority taking enforcement action under the provisions of the Housing Act 2004.'*

The consultation states that:

*'In order to assess whether accommodation is in a reasonable physical condition, we would expect that a local authority officer, or a person acting on behalf of the authority such as a letting agent, would visit the property. In doing so they should take account of the property's general condition and state of repair, such as signs of damp, mould, loose or cracked windows.'*

**Shelter believes that, in order to protect homeless households with very little choice over whether to take an offer of accommodation, the regulations must require that, as a minimum, local authorities should ensure the accommodation is free of Category 1 Hazards.**

**As an assessment for Category 1 Hazards should only be made by a person who is trained and experienced in making HHSRS assessments, we strongly believe that a local housing standards enforcement officer (usually an environmental health officer) should make this assessment. Generally, a letting agent would not be an appropriate person to make such an assessment, especially if they have a vested interest in the letting going ahead.**

Ideally homeless households should not be placed in property with at Category 2 hazards or above.

Category 1 Hazards (such as signs of potential carbon monoxide leaks or inadequate means of escape from fire) may not be spotted by an untrained agent looking at the general condition and state of repair of the property. There are lessons to be learned from the dispersal of homeless asylum seekers to private rented accommodation procured by social services departments and asylum support agencies.

For example, a report on asylum seeker dispersal in Birmingham found that:

*'During 1999 officers in Birmingham Housing Department responsible for enforcing housing standards in the private sector became aware that many of the placements, both by local authorities in London and the south-east and by Birmingham's own Social Services Department, were in hostels and 'houses in multiple occupation' that had not been checked for standards, and was often sub-standard. There was little support from either landlords or Social Services, e.g. through provision of furniture, cooking equipment, cutlery and crockery etc.; in the words of one housing officer, "People were just dumped." Still less were there any "strategic decisions", e.g. about the impact of placements on communities in particular areas. Housing officers did not have the resources to visit each property and advise on standards or issue notices to landlords about work to be done.'*<sup>35</sup>

We do not believe that the cost of an HHSRS inspection should be the main reason not to require local authorities to be satisfied that accommodation is free from Category 1 Hazards. Local authorities are free to decide whether to offer private rented accommodation as a discharge of homelessness duty. Where they choose to use this power, they should ensure there is provision for inspections.

A HHSRS inspection is the only way to adequately ensure properties offered are free of the level of health and safety hazards which the local authority has a duty to enforce. Restating the duty to take

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<sup>34</sup> DCLG (May 2012) [Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 - Consultation](#), pages 9-10, paragraphs 15-16

<sup>35</sup> Birmingham Race Action Partnership (June 2001) [A research report exploring the current debates around asylum seekers and refugees in Birmingham](#), page 18

enforcement action against Category 1 Hazards in the suitability regulations would ensure awareness of this requirement among local housing officers, but paragraph 16 of the draft regulations leaves the standard open to disregard.

This addition to the regulations would also avoid the unnecessary and costly scenario of local authorities having to extract a homeless family from a tenancy because the accommodation was subsequently found to have Category 1 Hazards. This scenario could well leave the tenant tied into a contract with the landlord, making a removal of the family all the more difficult despite the accommodation being clearly unsuitable.

It is essential that regulations ensure that accommodation is proactively inspected for dangerous hazards because private rented accommodation is often poor quality, as mentioned above, and Shelter research<sup>36</sup> on private renters' approach to housing problems shows how a lack of security and consumer power can put people in a weak position to get improvements to poor housing conditions:

- 7 per cent said they did nothing at all because they were scared of the consequences
- 41 per cent spoke to their landlord, who took no action
- 12 per cent ignored the problem because they did not think anything would happen
- 13 per cent left the property and did nothing

Our research<sup>37</sup> has found that adults in lower social grades who experienced a problem with a private landlord in the past 10 years were twice as likely to take no action about a problem for fear of the consequences (10% of C2DE respondents compared to 5% of ABC1).<sup>29</sup> This affirms the weaker consumer power of private tenants from lower socio-economic backgrounds.

Recent Shelter and Crisis research<sup>38</sup> exploring the use of private rented sector to accommodate homeless people and those in housing need has found that people were generally reluctant to ask the landlord to complete what they themselves saw as 'minor' repairs – things that could have a positive effect on the way they lived their lives. This is because they did not want to be seen as 'problem' tenants who complained, or give the landlord any reason to take action towards retaliatory eviction. Some participants said they had already completed the repairs themselves. In contrast, others were living with outstanding repairs because there were felt to be general penalties if tenants asked the landlord to carry them out.

Participants also reported that they felt concerned about managing their landlord's perception of them as good or bad tenants, and linked to this was a concern not to give landlords any reason to evict them. Some reported that they had been told, by landlords, about the poor behaviour of previous tenants and the fact that they had been evicted. As a result, participants were trying very hard to be 'good' tenants, part of which involved not asking for repairs.

### *Health and Safety Matters*

**We support the requirement of the draft regulations that accommodation shall not be regarded as suitable where:**

**(b) the local housing authority are of the view that any electrical equipment supplied with the accommodation does not meet the requirements of regulations 5 and 7 of the Electrical Equipment (Safety) Regulations 1994(11)**

**(c) the local housing authority are of the view the landlord has not taken reasonable fire safety precautions with the accommodation and any furnishings supplied with it**

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<sup>36</sup> De Santos, R. (March 2012) [Homes for families? The case for stable private renting](#), Shelter, page 10

<sup>37</sup> De Santos, R. (March 2012) [Homes for families? The case for stable private renting](#), Shelter, page 6

<sup>38</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, Page 44

**(d) the local housing authority are of the view the landlord has not taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation**

While we welcome the requirement that electrical equipment (such as cookers and fridges) should meet safety regulations, we are disappointed that the draft regulations do not require local authorities to assess whether electrical installations (such as fuse boxes, extractor fans and water heaters) are safe. Faults in electrical installations can be a cause of fire and, unlike some electrical equipment, are costly and difficult for a homeless household to repair, replace or even disconnect.

**While we welcome the general requirement that the landlord has taken reasonable fire safety precautions with the accommodation and any furnishings supplied, we strongly advise that the regulations are strengthened, particularly by requiring that:**

- **All furnishings supplied comply with the legal minimum standards set by the Furniture and Furnishings (Fire) (Safety) Regulations 1988.**

We also believe the regulations should require that:

- Adequate smoke alarms are installed;
- There are adequate electrical sockets to prevent overloading;
- Electrical installations show no signs of a fire risk;
- A fire safety risk assessment to comply with the Regulatory Reform (Fire Safety) Order 2005<sup>39</sup> for local authorities has been carried out;
- People placed in accommodation are advised how to prevent and escape a fire, such as ensuring fire doors are kept closed and an escape route is planned.

While we welcome the general requirement that the landlord has taken reasonable precautions to prevent the possibility of carbon monoxide poisoning in the accommodation, we strongly advise the regulations are strengthened by requiring that:

- A trained and experienced HHSRS assessor inspects the accommodation for signs and risks of carbon monoxide leaks;
- A carbon monoxide alarm is installed.

Finally, the regulations should set a timeframe for review and confirmation of electrical, fire and carbon monoxide safety standards in the same way that there is for gas safety.

### *Houses in Multiple Occupation*

**We support the requirement of the draft regulations that accommodation shall not be regarded as suitable where:**

**(f) it is a house in multiple occupation subject to licensing under section 55 of the Housing Act 2004 and is not licensed; or**

**(g) it is a house in multiple occupation subject to licensing under section 56 of the Housing Act 2004 and is not licensed.**

These regulations will ensure that HMO accommodation offered meets the standards required of HMOs subject to a mandatory or discretionary HMO licensing scheme.

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<sup>39</sup> [The Regulatory Reform \(Fire Safety\) Order 2005](#), SI No.1541/2005

From January 2012 the definition of a young person for the purposes of the Shared Accommodation Rate of HB changed from 25 years to 35 years old. This means that most HB claimants under 35 years old will only be entitled to benefit to pay for a room in a shared house. Up to 62,000 people will be affected, with an average HB cut of £41 per week.<sup>40</sup>

This is likely to have significant implications for the demand for and growth of HMOs. It is therefore essential that HMO accommodation offered as discharge of homelessness duty meets adequate standards and amenities.

It would be helpful if the regulations could indicate whether hostel-type HMO accommodation would be considered suitable for discharge of duty. Often accommodation of this nature has no or inadequate facilities for the storage, preparation and cooking of food. Interim findings from research by Shelter and Crisis identify that:

*'Being without basic white goods, like a fridge, was particularly challenging as it directly affected participants' wellbeing, diet and ability to budget. Those without fridges or freezers were unable to save or store food, meaning some might be wasted. If people were without ovens or ways of heating food, they had to rely on certain food types, such as more expensive takeaway food if they wanted hot food'.<sup>41</sup>*

The regulations should also require that an HMO offered as final discharge provides a suitable shared environment, including the other occupants of the HMO. For example, a vulnerable young woman should not be placed in a HMO with a man who has a record of abuse. Suitability of sharing should take into account cultural needs, such as storage and preparation of food, and privacy in using bathroom facilities.

We support Homeless Link in expecting that people who have been found to be in priority need, and therefore due the main homelessness duty, would be offered appropriate support to live in HMO accommodation. There may be a role for the voluntary sector in preparing individuals to live with others in private rented sector HMO accommodation, for example in delivering conflict resolution training. This targeted work could increase the rate of tenancy sustainment, thereby saving money on tenancy breakdown and re-housing costs.

### **Landlord Behaviour**

**We warmly welcome the requirement of the draft regulations that accommodation shall not be regarded as suitable where:**

**(e) the local housing authority are of the view the landlord is not a fit and proper person to act in the capacity of landlord, having considered if the person has:**

**(i) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003(12) (offences attracting notification requirements);**

**(ii) practised unlawful discrimination on grounds of sex, race, age, disability, marriage or civil partnership, pregnancy or maternity, religion or belief, sexual orientation, gender identity or gender reassignment in, or in connection with, the carrying out of any business;**

**(iii) contravened any provision of the law relating to housing or of landlord or tenant law; or,**

**(iv) acted otherwise than in accordance with any applicable code of practice for the management of a house in multiple occupation, approved under section 233 of the Housing Act 2004(13).**

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<sup>40</sup> Department for Work and Pensions (August 2011) [Housing Benefit equality impact assessment: Increasing the Shared Accommodation Rate age threshold to 35](#)

<sup>41</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, page 39

We are very pleased that the draft regulations include the 'fit and proper person' test. This should make it clear to local authorities that it is wholly unsuitable to place vulnerable homeless people, such as young care-leavers, people with disabilities or learning difficulties, refugees or women who have fled domestic violence, in accommodation that may be managed by people who have criminal convictions for violence or sexual offences, or have previously breached housing or equalities legislation.

However, we are concerned that the consultation suggests that self-certification of the 'fit and proper person' test will be sufficient to make an offer suitable. This could lead to a situation where a vulnerable homeless household could be referred to an individual with a history of convictions, and is perhaps acting with ill-intent in self-certifying his/her suitability. We recognise that self-certification is used for the 'fit and proper person' test in the statutory licensing of HMOs. But, in these cases, the sanction for dishonest self-certification or subsequent breach of the test, is being refused an HMO licence. However, in the case of homeless discharge, there is no sanction other than that particular landlord no longer being considered 'fit and proper' for homeless discharge. Therefore, we do not consider this a strong enough deterrent to rogue landlords or individuals who may be at risk of committing an offence, especially when households may have no choice around the offer.

**We strongly advise that the regulations should go further and require that only accredited landlords should be regarded as fit and proper for the purposes of discharge of the statutory homeless duty.**

Shelter research<sup>42</sup> shows that about 60 per cent of local authorities currently offer accreditation schemes. Accreditation should only be awarded where the landlord has demonstrated that they meet acceptable standards, such as agreeing to complete repairs within reasonable timescales, protecting the tenant's deposit with an official scheme and being trained to a certain level of competence. These are not unreasonable demands of competent landlords and, applied here, would help ensure that landlords used to accommodate homeless households have met similar standards to people who sell food to the public or let out holiday accommodation.

In particular, we are concerned about the potential for retaliatory evictions of vulnerable homeless households. Local authorities should be alert to this practice amongst landlords they use to discharge their duty and commit to cease using them when they become aware of examples.

**We also believe that the regulations should require that homeless households should have a named contact in the local authority to whom they can complain in confidence about a landlord's behaviour or level of service.**

This would ensure that, where a local authority receives persistent complaints about a particular landlord, they could either remove their accredited (or 'fit and proper person') status or be required to improve their level of service in order to retain their status. This would also help guard against landlords using harassment or the threat of retaliatory eviction to deter tenants from complaining, for example about repairs. In areas where the local authority has a tenancy relations service, the named contact should be a tenancy relations officer (TRO). Shelter, along with the Association of Tenancy Relations Officers, has consistently argued that local authorities should be under a duty to provide a tenancy relations service to prevent harassment and unlawful eviction of all private tenants. At the very least, we believe that local authorities choosing to discharge duty into the private rented sector should provide a TRO-like service.

Many local authorities already place vulnerable households with accredited landlords or are keen to move to this approach. These authorities are seeing more sustained tenancies, better standards, and problems resolved earlier and with lower costs to the authority, the landlord and the tenant. By setting consistent, minimum local standards, accreditation would help to ensure that homeless households were protected and rogue landlords were deterred from preying on the most vulnerable. Accreditation

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<sup>42</sup> Shelter (April 2011) [Campaign Briefing - Landlord accreditation](#). The research is based on Shelter analysis of all local authority websites in England, carried out on 17/01/2011

also ensures that local authorities proactively and positively communicate and work with good local landlords.

We do not believe that the cost of accreditation should be the main reason not to require local authorities to use only accredited landlords. In fact, we would argue that the costs of reactive enforcement of standards, dealing with tenancy breakdown and repeat homelessness could be greater. Local authorities are free to decide whether to offer private rented accommodation as a discharge of homelessness duty. Where they choose to use this power, they should be required to ensure there is adequate provision for accreditation.

We welcome the Housing Minister's recent commitment to tackling rogue landlords<sup>43</sup>, including the commitment to set up a rogue landlord taskforce and tougher sentencing for criminal landlords.

### *Elements of Good Management*

**We support the requirement of the draft regulations that accommodation shall not be regarded as suitable where:**

- (h) the property does not have a valid Energy Performance Certificate; or**
- (i) the property does not have a current gas safety record in accordance with regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(14); or**
- (j) the landlord has not provided to the local housing authority a written tenancy agreement, which the landlord proposes to use for the purposes of a private rented sector offer, and which the local housing authority considers to be adequate.**

As the consultation recognises, all these are elements of good housing management and should not be onerous for a professional landlord.

We support the position of the Chartered Institute of Environmental Health that the regulations should go a step further and state that a property is not suitable unless it conforms to a minimum EPC rating considered to be satisfactory by the local housing authority. This would be consistent with DECC's desire to see F and G-rated private rented sector properties brought up to standard before the 2016 and 2018 requirements come into effect.

The provision of an adequate written tenancy agreement by landlords to the local authority and tenant, detailing the rent and other charges, their obligations and those of the landlord is necessary in ensuring that tenants are aware of their contractual rights and responsibilities.

**We advise that a model tenancy agreement is included within the statutory guidance on the legislation. This would provide landlords and local authorities with a standard form agreement to use in cases of homelessness discharge, and help to prevent landlords from using contracts that contain unfair or unreasonable terms, such as call-out charges for repairs or professional cleaning at the end of the tenancy.**

**We also strongly advise that the statutory guidance should contain examples of clauses that should not be used in tenancy agreements used as a discharge of homelessness duty. For example, it would be unacceptable for tenancy agreement to contain six month break clauses (without the agreement of the applicant) as this defeats the purpose of the legislation requiring 12 month fixed terms.**

We are very disappointed that the regulations do not include a requirement that the applicant's deposit should be placed in an authorised deposit protection scheme. We note that it is the Government's intention to recommend in statutory guidance that local authorities should remind the landlord of the

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<sup>43</sup> [http://england.shelter.org.uk/campaigns/evict\\_rogue\\_landlords/the\\_housing\\_ministers\\_response](http://england.shelter.org.uk/campaigns/evict_rogue_landlords/the_housing_ministers_response)

requirements of the statutory deposit scheme. However, we consider that this will leave vulnerable tenants, and those who fund their deposits, open to abuse in this area.

We do not believe that the timeframe of the homeless suitability assessment being inconsistent with the timeframe of the deposit protection scheme should be the main reason for not including deposit schemes within the regulations. We propose that a separate arrangement is negotiated with the deposit scheme with timeframes that the local authority can work within.

### **Question 3: Are there any additional elements that should form part of the Order or any other comments you wish to make?**

#### ***Provision of furnishings***

We would like the regulations, or at the very least the statutory guidance, to require that accommodation offered is adequately furnished where required.

In our experience<sup>44</sup> it is common for homeless households to be without essential furnishings:

- *'At this early stage of having moved into the PRS tenancy, there was a material difference between people who had had furnished homes before and were not in their first home, and those who had not had homes of their own before and were therefore unlikely to have any basic furniture or utensils.*
- *There were additional factors explaining the lack of furniture, such as participants fleeing domestic violence and unable to take furniture with them, or people who had nothing after having been roofless or in temporary accommodation, including young people who had not set up home on their own before, or some older men who had tended to live in partners' homes.*
- *People who did have furniture tended to have it from previous properties, or may have been lent it by family members. Others had been able to find furniture from places like skips, and some had access to donated furniture.'*

Work by Shelter Scotland<sup>45</sup> has identified that a large majority of homelessness officers highlighted the importance of furniture for the sustainment of tenancies by homeless persons, with prompt assistance with furniture being key to helping people move into tenancies. Delays with processing applications for Community Care Grants were cited as a barrier.

We acknowledge that social tenancies offered as a discharge of duty are not required to be adequately furnished. However, historically at least, social tenancies are usually permanent tenancies, and so it is less of a risk to invest in furnishings, such as carpets, curtains, furniture, and appliances, such as cookers, fridges and washing machines. People in housing need, who are offered a 12 month private tenancy, would be taking a risk investing in such items, where they can, because they may not be able to take them when they move again. It can be prohibitively expensive for homeless households to furnish a tenancy but there are costs attached to a lack of adequate furnishings:

- *'Some participants had also accessed loans available to help people in emergencies in order to furnish their homes, such as a Crisis Loan. However, paying the loan back did represent an added cost to everyday expenditure. Others with no furniture at all may have exhausted all these options or*

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<sup>44</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, page 38

<sup>45</sup> Shelter Scotland (August 2010), Research report [Furniture for the homeless: A house without furniture is not a home](#)

*felt they were not available to them – for example, not being eligible for a Crisis Loan because of previous debt.*

- *Being without basic white goods, like a fridge, was particularly challenging as it directly affected participants' wellbeing, diet and ability to budget. Those without fridges or freezers were unable to save or store food, meaning some might be wasted. If people were without ovens or ways of heating food, they had to rely on certain food types, such as more expensive takeaway food if they wanted hot food. Other than cost, this impacted on people's wellbeing, in terms of how they thought about their diet and how they provided for dependents.<sup>46</sup>*

With increased use of the private rented sector, there should be consideration of the provision of furnishings for those moving into accommodation. The withdrawal of Community Care Grants and Crisis Loans, which were previously a potential source of funds for people to buy the basics, and their replacement with a discretionary, de-ring-fenced fund, has left a potential problem for people moving into new accommodation, who may find themselves without a bed, fridge or curtains. Under these conditions, people are less likely to sustain their tenancy, resulting in repeat homelessness.

At the very least, local authorities should be required to assist homeless households with obtaining furnishings, such as supporting local furniture projects for people on low incomes or offering vouchers for second-hand shops.

### ***Dealing with a successful challenge on suitability where a tenancy has been granted***

Despite the positive steps of the draft regulations in strengthening provision, there will still be offers and decisions that applicants regard as unsuitable, and in respect of which they may wish to seek a review or appeal to the county court. Where the applicant had already accepted the tenancy under protest, it is unclear what the effect of a successful review or appeal would be where he or she is now committed to a twelve month agreement. Authorities need to consider in advance of the applicant entering into the tenancy what steps are to be taken to obtain his/her release from the tenancy if the review or appeal is successful and the property is found to be unsuitable. We would like this to be addressed in statutory guidance.

### ***Provision of tenancy sustainment support***

Interim research by Shelter and Crisis<sup>47</sup> finds that types of support offered to people in housing need varies by region, organisation and individual, regardless of need.

*'Participants in the project had been offered and accepted support from a range of organisations. In general they tended to be more positive about support from any organisation, if at a higher level. Participants reported that more intensive support tended to be received from VCS agencies. This could include being talked through the tenancy process and being helped to find a tenancy.'*

*'Across the board, people felt more positive about support if it provided them with reassurance that, should anything go wrong in their tenancy, they could continue to seek support from the same support worker or organisation'*

To help ensure more consistent and appropriate support for those in housing need we would like to see a national minimum offer of ongoing tenancy support for those households who have had their duty discharged into the private rented housing. We would welcome discussions concerning the details of this as further guidance is developed.

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<sup>46</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, pages 38-39

<sup>47</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, pages 5 and 25

## Part Two: Location of accommodation

**Question 4: Do you agree that the existing provisions on location and suitability should be strengthened so that homeless households are placed nearer to home wherever possible?**

**We strongly agree that the existing provisions on location and suitability, namely Section 208 of the Housing Act 1996 and paragraph 17.41 of the Homelessness Code of Guidance should be strengthened so that homeless households are placed nearer to home.**

We are very pleased that any measures adopted would apply to any accommodation offered by authorities under homelessness legislation, including temporary accommodation, private rented sector offers and social housing.

The Housing Act 1996 states that ‘so far as reasonably practicable a local housing authority shall in discharging their housing functions under this Part secure that accommodation is available for the occupation of the applicant in their district’. However, in the absence of regulations on the factors to which an authority must have regard (including the ‘reasonably practicable’ factor) in deciding whether to make an offer of accommodation to an applicant within its own area, the courts have been reluctant to intervene in out-of-borough offers.

This is illustrated by the case of *R (Calgin) v Enfield L.B.C.*<sup>48</sup>. Mr Calgin lived with his wife and their 11-month-old baby, together with his two brothers and their respective families. Enfield made him an offer of accommodation in Birmingham. Mr Calgin sought a review of its suitability because he had a strong family connection with Enfield, knew no-one in Birmingham and argued they would be isolated there. However, the court held that in determining whether it was ‘reasonably practicable’ to find appropriate accommodation within the council’s area, cost was not an irrelevant or improper consideration. The court would not readily interfere with the approach of a local authority to the question of suitability.

### *Impact of welfare reform*

This new regulation is necessary because of the future interaction between discharge of homelessness duties into the private rented sector and cuts to HB. Housing authorities may argue that they can only offer accommodation out-of-area (or in a cheaper part of the borough) because to do otherwise would make the accommodation unaffordable to benefit claimants.

Research<sup>49</sup> shows that the 2011 HB changes immediately reduce the proportion of London neighbourhoods affordable to LHA claimants from 75% to 51%. This falls further to 36% by 2016 as a result of the measures’ longer-term effects. Affordability will further decline following the introduction of an overall cap on households’ benefits from 2013. Research<sup>50</sup> shows that all families with three children will lose some entitlement to LHA across one third of English local authorities and that families with just two children will see their housing benefit reduced in some parts of London.

In the summary of the responses to the Government’s consultation on changes to homelessness legislation it was noted<sup>51</sup> that ‘a number of authorities wanted to make out of borough placements easier. This was partly in response to the anticipated effects of Local Housing Allowance reforms and a recognition that in some places only a small private rented sector existed’. Others expressed a concern ‘that other local authorities would discharge the duty with an offer of accommodation in their area, decreasing the pool of properties available to them and increasing the burden on their support budgets’.

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<sup>48</sup> [2005] EWHC 1716 (Admin.)

<sup>49</sup> Fenton, A. (January 2011) [Housing Benefit reform and the spatial segregation of low-income households in London](#), Cambridge Centre for Housing and Planning Research

<sup>50</sup> Lister, S., Reynolds, L. And Webb, K. (March 2011) [The Impact of the Welfare Reform Bill measures on affordability for low income private renting families](#), Shelter Research Report

<sup>51</sup> CLG (February 2011) [Local decisions: next steps towards a fairer future for social housing – summary of responses to consultation](#), paragraphs 6.10 and 6.15

During debates on the Welfare Reform Bill, we argued that the proposed £26,000 cap to overall benefits will create significant problems for homeless households. In order to find affordable temporary accommodation under the cap, local authorities will be forced to place some homeless families far out of their local area, severing ties with local support networks and job opportunities. The interaction of the cap with Government plans to re-house more homeless households in the insecure private rented sector has not been sufficiently considered. We note that the DWP has yet to set out how some of the welfare changes will apply to the payment of temporary accommodation.

### *Importance of location on the well-being of homeless people*

Location of accommodation is one of the most important factors for people in need of a home. The findings of interim research, quoted previously, by Shelter and Crisis exploring the use of the private rented sector to house homeless people found that:

*'most people said that they felt that the area was the most important factor for them, and one that they had based a decision on.'*<sup>52</sup>

The research<sup>53</sup> found that:

- *'Some participants who had moved distances, not from choice but the need to find a property, and who tended to be people who have lived in the same area for a long time with family and network ties and support, reported finding having to move very disruptive emotionally and socially.'*
- *People often reported feeling geographically but also emotionally isolated and dissociated from their social networks or routines they already had, in the areas they had been living in. This meant that in their new tenancy they might be without the support they had received previously, whether that was informal support from family, friends, work colleagues, or more formal support from children's teachers or local authority support workers with a good knowledge of the household.'*
- *One participant, who had moved several miles, reported that they were then unable to attend their church, subsequently losing vital friendships as well as informal childcare support previously provided by members of the congregation. The participant reported that this left her unable to leave her home and often being in the position of having, in her words, to 'beg' someone to come over to take care of her children.'*
- *One of the most tangible implications of moving between areas (or finding a home some distance away from former housing, even within local authority boundaries) for participants with children, was the upheaval on children's schooling.'*
- *Significant distances were travelled by people in order to maintain a child's schooling: The additional impact of travelling long distances to get to school was the cost. This was reported as being prohibitive and created strains on household finances.'*
- *In some cases, children were no longer able to attend their school and there had been no local availability in their new area, meaning that some were on waiting lists in their new local authority area. One participant, who was forced to switch local authority areas due to a lack of available property, faced a 15-mile journey to take her five-year-old child to school. She was told by the school not to take her child in. In her new local authority area, there are no school places and her child remains on the waiting list.'*

However, as the consultation acknowledges, some applicants may wish to move outside of the previous district for a variety of reasons. Our research bears this out:

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<sup>52</sup> Smith, M. Shelter and Crisis (June 2012) [Sustain: a longitudinal study of housing wellbeing in the private rented sector - interim report 2012](#), Big Lottery Fund, page 34

<sup>53</sup> As above, pages 36-37

*Some participants entered PRS accommodation through schemes that assisted ex-offenders to find properties and, partly because of this, they were actively encouraged to move away from their old networks and routines (to avoid re-offending or substance-use behaviour). Being away from old networks, in this case, was viewed as a positive (in interviews participants reported that they had been advised to do this by their support workers and indicated they agreed with the rationale for this advice).<sup>54</sup>*

### **Increases in out-of-area offers under homeless legislation**

There is already Government evidence that homeless people are placed in private rented housing out of the area of the local housing authority to which they have applied for assistance. The latest statistics, for March 2012, show that such placements rose by more than 1,500 from March 2011. The percentage of households placed in temporary accommodation out-of-area increased from 11 per cent to 16 per cent between 2008 and 2011:

<b>Quarter: January - March Year</b>	<b>Number in temporary accommodation (households)</b>	<b>Number placed out of area (households)</b>	<b>Percentage placed out of area (households)</b>
2008	65,752	7,213	11%
2009	63,873	7,957	12%
2010	48,047	5,130	11%
2011	48,235	6,295	13%
2012	50,434	7,867	16%

Source: April-June 2011, P1E data as reported (DCLG)

It is possible that, in some cases, households have been placed out-of-area because of the need to move away, for example to escape violence. However, this is unlikely to account for all such placements.

What is more, this issue is not confined to London boroughs. Local housing authorities in all regions use out-of-area placements, as shown by the table below.

<b>Region</b>	<b>Number in temporary accommodation (households)</b>	<b>Number placed out of area (households)</b>	<b>Percentage placed out of area (households)</b>
London	36,735	7,093	19.3%
South East	4,275	441	10.3%
East of England	3,011	121	4%
South West	2,003	67	3.3%
West Midlands	1,420	56	3.9%

<sup>54</sup> Smith, M. Shelter and Crisis (June 2012) *Sustain: a longitudinal study of housing wellbeing in the private rented sector*. Big Lottery Fund, page 36: [http://england.shelter.org.uk/professional\\_resources/policy\\_and\\_practice/sustain](http://england.shelter.org.uk/professional_resources/policy_and_practice/sustain)

North West	1,103	54	4.9%
Yorkshire and the Humber	935	2	0.2%
East Midlands	743	19	2.6%
North East	209	14	6.7%
England	50,434	7,867	15.6%

Source: January-March 2012, P1E data as reported (DCLG)

### *Problems associated with out-of-area placement*

There are lessons to be learned from the dispersal of homeless asylum seekers to private rented accommodation procured out-of-area by either local authorities or by asylum support agencies. This practice, which commenced in the late 1990s, was widely regarded as having created serious problems both for the destitute households and the local authorities to which they were dispersed. Problems included:

- Inability of 'receiving' authorities to plan services for new residents.
- Vulnerable people (such as those with mental health problems) accommodated in an area where services are limited and without arrangements being made for transfer of support.
- Distortion of the local private letting market as 'placing' authorities compete for accommodation.
- The work of local environmental health and housing standards officers, to improve standards in the local private sector and drive out rogue landlords, being undermined by placements into the area.

The Audit Commission found that the practice of dispersal presented serious difficulties for receiving authorities. With no way of predicting exactly how many people were coming, when they would arrive and how long they would stay, receiving local authorities could not plan ahead. These problems were compounded by poor information flows between receiving and dispersing authorities. Inadequate needs assessment prior to dispersal meant that some people were sent to areas that could not meet their needs for specialist services, such as mental health support. Particular problems were caused for children moving schools – and for the schools that suddenly had to take on new pupils.<sup>55</sup> These problems must be avoided if homeless households are placed out-of-area.

**Question 5: Do you agree that regulations should specify the factors in relation to location which authorities should take into account when considering the suitability of accommodation?**

**We agree that the new regulation should list the factors to which an authority must have regard (including the “reasonably practicable” test) in deciding whether to make an offer of accommodation to an applicant within its own area, and if that is not considered possible, in choosing a location which may mitigate the worst effects of uprooting a family from its present surroundings.**

We therefore strongly support the Government's preferred approach of specifying in regulations the factors already listed in the Homelessness Code of Guidance.

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<sup>55</sup> Audit Commission (June 2000) [Another Country: Implementing dispersal under the Immigration and Asylum Act 1999](#), paragraphs 22-23, 112 and 115

We welcome the Government's proposal<sup>56</sup> that:

*'Regulations could require that in considering the suitability of accommodation the local authority must take into account location and in particular:*

- *distance of the accommodation from the applicant's previous home;*
- *disruption to the employment, caring responsibilities, or education of members of the household;*
- *access to amenities such as transport, shops and other necessary facilities; and*
- *established links with schools, doctors, social workers and other key services and support essential to the well-being of the household.*

**However, we do not think the regulations go sufficiently far in requiring that local authorities to simply 'take into account' the specified location factors. We believe that the regulations should require that accommodation 'should not be considered suitable' if it causes serious disruption to the household, such as having to give up a job, children to having to change school in a public exam year, or people losing vital social support or medical care.**

The consultation also seeks views on an alternative approach<sup>57</sup>:

*'to require local authorities, when using accommodation that is out of borough, to use accommodation in the nearest practicable district'*

We do not agree with this as an alternative to requiring that local authorities should take account of individual circumstances and specifying factors, such as disruption, that should be used to assess the suitability of location. For certain applicants, there will be little difference in the disruption caused by living in the nearest available district and living substantially further away, as the former could still be too far away (or not well linked by public transport) to avoid household members having to give up a job, school place, local medical care or vital support networks.

We are pleased that the consultation acknowledges this:

*'While this approach is simple to understand, however it could have some unintended consequences as it does not take account of each household's individual circumstances.'*

There is also a risk that requiring authorities to use accommodation in the nearest practicable district could result in certain areas having a comparatively high concentration of placements, with implications for the local infrastructure and support services.

However, we believe that the alternative approach would be helpful **in addition to** the preferred approach. Even with a requirement for local authorities to take into account individual circumstances, in many cases they will consider that an out-of-area placement is suitable. This could be the case with an unemployed, single homeless person, for example. In such cases, it would still be unsuitable for the applicant to be placed on the other side of the country. An offer of accommodation so far away could result in either the applicant turning down the offer and being left with no further assistance, or an unsustainable tenancy. This could lead to a pattern of repeat homelessness, which is both expensive for the state and significantly damaging for individuals, potentially leading to rough sleeping.

The alternative approach also suggests that<sup>58</sup>:

*'It is also important, where moves out of district take place, that proper procedures are observed between the placing and receiving authority for the benefit of the household who is moving and the local*

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<sup>56</sup> DCLG (May 2012) [Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 - Consultation](#), page 17, paragraph 42

<sup>57</sup> DCLG (May 2012) [Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 - Consultation](#), page 18, paragraph 43

<sup>58</sup> DCLG (May 2012) [Homelessness \(Suitability of Accommodation\) \(England\) Order 2012 - Consultation](#), page 18, paragraph 44

*authority where they are being moved. For example it is important to ensure that households have the best opportunity to make a smooth transition between schools and other services they may need in the new district, and that competition between placing authorities and host authorities for private sector accommodation does not lead to a waste of public money. The Interborough Accommodation Agreement already in operation within London may serve as a useful example of how this could be achieved for moves outside of London.'*

Again, we do not agree with this as an alternative to requiring local authorities to take account of individual circumstances and specifying factors, such as disruption, when assessing the suitability of location. However, again, we believe that this would be a helpful **in addition to** the preferred approach where households are placed out-of-area. We agree that the Pan London Agreement<sup>59</sup> may serve as a useful example of how placing authorities might undertake moves with receiving authorities, to the benefit of the latter and the homeless household concerned.

**Question 6: Do you agree that those factors listed above are the ones local authorities should take into account when considering location?**

**We strongly agree that the listed factors are what the local authority should take into account when considering location. They are each key in promoting and preserving health and well-being both in the short and long-term for individuals.**

We suggest that the statutory guidance clarifies that links with specialist services should be considered under '*other key services and support essential to the well-being of the household*'. Some of the most vulnerable homeless people have complicated, personalised packages of care that would be difficult to replicate in a new geographical area.

We also suggest that the guidance clarifies that cultural and religious needs, such as places of worship or Halal and Kosher food shops, should be considered under '*other necessary facilities*'.

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<sup>59</sup> London Councils (March 2011) [Pan London Agreement on Inter-Borough Accommodation Placements](#)